IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

SECOND APPEAL NO. 526/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : September 14, 2006

This second appeal is directed against the judgment and decree dated 16th June 2006 passed in Regular civil Appeal No. 28/1999 by Additional District Judge, Achalpur dismissing the appeal filed by the appellant against judgment and decree dated 22.1.1999 passed by Joint Civil Judge, Jr. Dn. Achalpur in Regular Civil Suit No. 160/1997.

The respondent filed the above suit for seeking declaration and recovery of possession in respect of the suit property on the ground that the plaintiff was in possession of the suit property and the defendant dispossessed him in the year

1997. The suit was contested by the appellant-defendant, inter alia, on the ground that he was the owner of the suit property. The trial Court, upon appreciation of the oral as well as documentary evidence led by the parties, held that the respondent-plaintiff was in possession of the suit property. The prayer made by the plaintiff for possession of the suit property was supported by documentary evidence by way of tax receipts issued by the Gram Panchayat as well as tax assessment list maintained by the Gram Panchayat which were before the trial Court. The defendant did not produce any document in support of his claim.

Mr. Mirza, learned counsel for the appellant submitted that since the trial Court had not granted prayer of declaration sought by the plaintiff, the decrees passed by the trial Court as well as by the appellate Court are unsustainable in law and deserve to be quashed and set aside. He further submitted that the findings given by both the Courts

below are perverse inasmuch both the Courts below have not properly appreciated the evidence led by the defendant to prove his title to the suit property.

I have considered the submissions made by the learned counsel for the appellant. I have perused the records. Perusal of the records discloses that the trial Court granted the relief of possession after holding that the plaintiff was in possession of the suit property prior to 1997 and it was the defendant who had dispossessed in the year 1997. The trial Court also held that prior possession of the plaintiff was established by documentary evidence. This finding given by the trial Court which is confirmed by the appellate Court is borne out from the evidence on record and as such it cannot be said to be perverse. It is pertinent to note that the appellant-defendant could not produce any document to prove his ownership over the suit property.

Insofar as the submission of Mr. Mirza that since the trial Court did not grant

prayer of the declaration, the trial Court could not have granted decree of possession is concerned, I am unable to accept the same. The trial Court, once it held that the plaintiff was in lawful possession and was dispossessed by the defendant, was entitled to grant decree of possession even without granting declaration in favour of the plaintiff. Therefore, I do not find any perversity in the findings given by both the Courts. In any case, no substantial question of law is involved in the present appeal. Consequently, the appeal is summary rejected.

JUDGE

A.